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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) No. 943 of 2007

PETITIONER : Tapan Kumar Naskar

VERSUS

RESPONDENTS : State of Chhattisgarh & Others.

Post for order on 15th May, 2007

Sd/-
Satish K. Agnihotri
Judge

(214)

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) No. 943 of 2007

PETITIONER : Tapan Kumar Naskar, S/o Late Shambhu Lal Naskar, Aged about 53 years, R/ A-32, Vashundhara Nagar, Ring Road No. 2, Bilaspur (C.G.)

VERSUS

RESPONDENTS : 1) State of Chhattisgarh – Through the Secretary, Water Resources Department, , D.K.S. Bhavan, Raipur (C.G.)

2) The Joint Secretary, Water Resources Department, State of Chhattisgarh, D.K.S. Bhavan, Raipur (C.G.)

3) Shri A.K.Shrivastava Sub-Divisional Officer, Hasdeo Sub Miner Sub –Division No. 4, Nawagarh, Distt. Janjgir-Champa (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

Single Bench : Hon'ble Justice Shri Satish K. Agnihotri.

Present: Shri P.Diwakar, Sr. Advocate with Shri K.K.Gupta, Advocate for the petitioner.
Shri V.V.S.Moorthy, Dy. Advocate General for the State/respondents 1 and 2.
Shri P.Mishra, Advocate for the respondent no. 3.

ORDER

(Passed on ……15th day of May, 2007)

1. The petitioner, being aggrieved by the transfer order dated 09.02.2007 (Annexure P/3) has filed this petition questioning the legality and validity of the said impugned order.

2. The indisputable facts, in nutshell, are that the substantive post of the petitioner is Assistant Engineer. Vide order dated 31.12.2006 (Annexure P/1) the petitioner was given additional charge of Executive Engineer, Hasdeo Canal Management Division, Janjgir, with financial and other administrative powers. Thereafter, vide order dated 8.12.2006, one Shri S.R.Minj, Assistant Engineer (Rupan), was transferred from the office of the Executive Engineer, Mini Mata Bango Canal Division, Sakti to Sub Division, Mini Mata Bango Canal Sub Division No. 17, Bilaspur in place of the petitioner. The petitioner was given the assignment of the

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Executive Engineer as granted earlier vide order dated 31.10.2006 full as Incharge, Executive Engineer. By the impugned order dated 9.2.2007, the petitioner was transferred as Incharge, Executive Engineer, Hasdeo Canal Management Division, Janjgir to Sub Division Hasdeo Sub Division No. 4, Nawagarh in place of respondent no. 3, who was given the charge of Executive Engineer, Hasdeo Canal Management Division, Janjgir in place of the petitioner.

3. The petitioner has impugned the transfer order on the ground that the petitioner could not be transferred to any other place and this order is colourable exercise of power to accommodate respondent no. 3 at his place. The next contention of Shri P.Diwakar, learned senior counsel appearing for the petitioner is that during the period when the Code of Conduct was imposed on account of Jal Upbhokta Sanstha Election, the impugned order could not have been passed and as such the same is bad and vitiated.

4. Shri V.V.S.Moorthy, learned counsel appearing for the State/respondent 1 and 2, per contra, submits that by the impugned order, the service of the petitioner has not been affected. The petitioner's substantive post is Assistant Engineer and the petitioner was holding the charge of Executive Engineer. Thus, the petitioner has not acquired any right to the said post. With regard to the election, learned counsel submits that there was no Code of Conduct during that period as the election of Jal Upbhokta Sansthan has nothing to do with the transfer and posting of the employees.

5. Shri P.Mishra, learned counsel appearing for the respondent no. 3 adopts the submissions of the State.

6. It is true that as per the letter dated 11.01.2007, there was a Code of Conduct applicable from 15.01.2007 to 11.02.2007 (Annexure P/5). The Code of Conduct - Do's and Dont's, issued by the Election Commission of India vide memo dated 7.01.2007 with regard to the transfer and posting of officials makes it clear that there is a ban on transfers of all the officials and officers connected with the conduct of election. In the present election which was related to the Jal Upbhokata Sanstha, the petitioner and the respondent no. 3 were not connected with the conduct

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of the election. The relevant portion of the Code of Conduct - Do's and Dont's, issued by the Election Commission of India is quoted as under:

> "On Transfers and posting of officials:
> **The Commission directs that there shall be a total ban on the transfer of all officers/officials connected with the conduct of the election. These include but are not restricted to:-**
>
> (i) The Chief Electoral Officer and Additional/Joint/Deputy Chief Electoral Officers;
>
> (ii) Divisional Commissioners;
>
> (iii) The District Election Officers, Returning Officers, Assistant Returning Officers and other Revenue Officers connected with the Conduct of Elections;
>
> (iv) Officers of the police Department connected with the management of elections like range IGs and DIGs, Senior Superintendents of Police and Superintendents of Police, Sub-divisional level Police Officers like Deputy Superintendent of Police and other Police Officers who are deputed to the Commission under Section 28A of the Representation of the People Act, 1951;
>
> (v) Other officers drafted for election works like sector and zonal officers, Transport cell, EVM cell, Poll material procurement & distribution cell, management of election in the State, are also covered by this direction.
>
> (vi) The transfer orders issued in respect of the above categories of officers prior to the date of announcement but not implemented till the time when model code came into effect should not be given effect to without obtaining specific permission from the Commission.
>
> (vii) This ban shall be effective till the completion of the election process.
>
> (viii) In those cases where transfer of an officer is considered necessary on account of administrative exigencies, the State Government may, with full justification, approach the Commission for prior clearance.
>
> (ix) **No appointments or promotions in Government / public Undertakings shall be made during this period, without prior clearance of the Commission."**

7. I have heard the learned counsel appearing for the parties, perused the pleadings and the documents appended thereto. It is indisputably admitted by the parties that the substantive post of the petitioner and the respondent no. 3 is Assistant Engineer. The petitioner was given firstly additional

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charge of Executive Engineer which is superior to him in rank and thereafter, he was given full fledged charge of Incharge, Executive Engineer. By the impugned order, the petitioner has been sent back to the original substantive place which is neither reversion nor a punishment. Granting charge of superior post is by way of temporary arrangement and the petitioner cannot claim any right on the basis that he was looking after the job of senior officer and no other person can be posted till regular incumbent is posted on that post.

8. The respondent no. 3 and the petitioner, both are Assistant Engineers. According to the learned counsel for the petitioner, the petitioner is senior to the respondent no. 3 in the seniority list of the Assistant Engineers. This may also not be relevant as it is for the employer to post a person due to administrative exigency and in public interest.

9. Second submission of the learned counsel for petitioner that the respondent no. 3 is more influential and in order to accommodate the respondent no. 3, the petitioner was transferred, has no basis except selfsame statement made by the petitioner. The petitioner has not produced any document or other facts which go to show that it was a colourable exercise of power. The principle of natural justice has no place in the context of withdrawal of the additional assignment.

10. It is well settled principle of law that this Court while exercising its jurisdiction under Article 226 of the Constitution of India has limited jurisdiction to the extent of reviewing the case, in the event, there is perversity, irregularity or illegality in the process of decision, not in the decision itself.

11. The Supreme Court in the case of V.Ramana Vs. A.P.SRTC and others {(2005) 7 SCC 338} after having considered the dicta laid down in B.C.Chaturvedi Vs. Union of India {(1995) 6 SCC 749}, Union of India Vs. G.Ganayutham {(1997) 7 SCC 463} and other cases, observed in para 11, as under:-

> "11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of

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> what has been stated in Wednesbury case, the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

12. In Ram Saran Vs. IG of Police, CRPF and others {(2006) 2 SCC 541} the Supreme Court observed as under:

> "8. The courts should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Associated Provincial Picture Houses Ltd. Vs. Wednesburn Corpn. (1984) 1 KB 223 : (1947) 2 All ER 680 (CA) commonly known as Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision. (See V.Ramana v. A.P. SRTC)."

13. Applying the well settled principles of law to the facts of the case, it is not a case where the discrimination, arbitrariness or unreasonableness has been found in the impugned order. Thus, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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